

BOARD OF APPEALS CASE NO. 5294

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BEFORE THE

APPLICANT: O. J. Lillo

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct an addition
within the required rear yard setback;
318 Palmetto Drive, Edgewood**

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OF HARFORD COUNTY

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HEARING DATE: November 18, 2002

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Hearing Advertised

Aegis: 10/16/02 & 10/23/02

Record: 10/18/02 & 10/25/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Mr. O.J. Lillo, is request a variance, pursuant to Ordinance 6, Section 10.05, to allow an addition within the required 45 foot setback (39 feet proposed) in an R3/CDP District.

The subject parcel is located at 318 Palmetto Drive, Edgewood, Maryland 21040 and is more particularly identified on Tax Map 66, Grid 2C, Parcel 507, Lot 241. The parcel is within the Willoughby Woods subdivision, is zoned R3/CDP and is entirely within the First Election District.

Mr. Jeffrey Hoilman appeared and testified that he is a contractor employed by American Design and Build, Inc. and that he has been hired by the Applicant to construct the proposed enclosure. The Applicant intends to demolish an existing 8 foot deck located to the rear of his house and construct in its place a 12 foot by 12 foot sunroom addition. The witness testified that the house was setback unusually far compared to other homes and has a 47 foot existing setback in an area where 45 feet is the minimum required. Because of this unusual location the rear building envelope is significantly reduced compared to other properties. The witness indicated that there are other lots in the neighborhood that share this unusual setback. Mr. Hoilman admitted that, while it is unusual in Harford County to find houses setback this far, it is common in this particular neighborhood. The witness did not think any adverse impacts would result from approval of the request.

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Mr. Anthony McClune appeared and testified for the department of Planning and Zoning. The Department, according to McClune, recommends that the request be denied. As reasons in support of the denial, the department was unable to find unique circumstances that justified the request for a variance. The lots in the area are similar in size and shape as compared to the Applicant's. All of the houses were placed uniformly along the street resulting in a uniform streetscape. The Applicant's house is no further back than his neighbors'. While decks have a much less restrictive setback requirement, attached rooms, such as that proposed are subject to a 45 foot minimum setback within this zoning classification. McClune felt that approval would result in a blanket approval in this neighborhood to ignore the required setbacks, since a finding of uniqueness at this location would become a precedent for other homes throughout the development. This would materially impair the purposes of these Code provisions and would not be in accord with generally accepted planning and zoning principles and practices.

No persons appeared and testified in opposition to this request.

CONCLUSION:

The Applicant, Mr. O.J. Lillo, is request a variance pursuant to Ordinance 6, Section 10.05 to allow an addition within the required 45 foot setback (39 feet proposed) in an R3/CDP District.

Harford County Code, Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Hearing Examiner finds that the subject parcel lacks unique characteristics that would warrant the grant of a variance pursuant to the Harford County Code. The Applicant's property is rectangular in shape, much like other properties in his neighborhood. It is similar in size to other neighboring properties and his house is setback a similar distance. Virtually all of the homes in this neighborhood are encumbered by the setback requirements upon which Applicant bases his request. Attachment 6A of the Department of Planning and Zoning Staff Report dated November 6, 2002 is an aerial view of the Applicant's home and surrounding community. That exhibit gives clear support to the conclusion that the lots in this neighborhood, the houses in this neighborhood and the streetscape are fairly uniform in nature and the Applicant's property is not materially different than any other surrounding properties.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

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Based on the facts presented to the Hearing Examiner, the Applicant's request fails to meet the first test enunciated by the Court in Cromwell. A grant of this variance could lead to a proliferation of other requests for other structures to encroach within the required setback requirements of this neighborhood and that is an undesirable result from a planning and zoning perspective. Both the Code and the Courts require that the parcel itself have characteristics unique and different than surrounding properties and that such uniqueness itself justifies the request. Those facts simply do not exist in the instant case.

While the Hearing Examiner agrees that the proposed sunroom addition would have little or no impact to adjacent properties, the potential impact of an approval could have major consequences of an adverse nature in this neighborhood.

For the reasons above stated, the Hearing Examiner recommends that the Board deny the requested variance.

Date DECEMBER 13, 2002

William F. Casey
Zoning Hearing Examiner